

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.846 SB OF 1997

DATE OF DECISION: APRIL 25, 2007

Manoj Kumar and others

.....Appellants

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Navdeep Singh, Advocate,
for the appellants.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

RANJIT SINGH, J.

This appeal is directed against the order passed by the Additional Sessions Judge, Gurdaspur, convicting the appellants for the offences under Sections 326/34 IPC and 323/34 IPC and sentencing them to suffer rigorous imprisonment for 2 years and fine of Rs.500/- for an offence under Section 326 IPC and RI for 6 months coupled with fine of Rs.200/- for an offence under Section 323/34 IPC. The appellants were also directed to undergo RI for 3 months in default of payment of fine for an offence under Section 326 IPC and 1 month RI in default of payment of fine under Section 323 IPC.

The facts, in brief, are that on 25.8.1993, Jatinder, complainant, a labourer, resident of Christian Mohalla, Dina Nagar, had gone for a walk at Takhia located in the Mohalla. One Manoj Kumar @ Mauji resident of the same Mohalla was also present there. He cut an indecent joke about the mother of the complainant, whereupon complainant slapped said Manoj Kumar. Thereafter, the complainant went to his house. At about 9 P.M., while proceeding to his house, when he reached near the house of appellant Manoj Kumar, Kala Ram father of Manoj Kumar gave a call from inside of his house that complainant be taught a lesson. Appellant Loti then came out of the house. He was allegedly carrying brick in his hand. Appellant Manoj then came out armed with kirch whereas appellant Leelo was armed with brick in her hand. As per the allegation, appellant Loti gave a brick blow, hitting on the left side of fore-head of the complainant. Appellant Manoj @ Mouji then gave a kirch blow, which hit the complainant on left side of his abdomen. Appellant Leelo then gave a brick blow, which hit on the middle finger as the complainant tried to ward off the blow. Raju, brother of the complainant and his mother, Kashmiro, reached the scene. They also allegedly witnessed the occurrence with the help of an electric light. The complainant first went to his house and thereafter got admitted in Civil Hospital, Dina Nagar. On the next day, the complainant had gone to Civil Hospital, Gurdaspur, from where he was referred to Guru Nanak Dev Hospital, Amritsar. He was operated upon at Guru Nanak Dev Hospital, Amritsar, and remained admitted there for 17 to 18 days. On a statement made by the complainant, the FIR was recorded under Sections 326, 323 read with Section 34

IPC. On 10.11.1993, on an application moved before the doctor, he opined that the injury suffered by the complainant could have been dangerous to life but for proper and timely medical aid to the patient, he was saved. Again on 1.12.1993, the doctor opined the injury suffered by the complainant to be grievous and dangerous to life but with proper and timely treatment the patient was saved. Accordingly, the offence was converted from Section 326 IPC to 307 IPC and after completion of investigation, the challan was presented under Sections 307, 323, 34 IPC. The appellants were charge-sheeted under Section 307/34 and 323/34 IPC on 19.2.1994. In support of its case, the prosecution examined six prosecution witnesses, out of whom three were doctors and one Investigating Officer. The case of the prosecution is supported by the eye witness account given by the complainant and his brother, Raju and there is no one to give any independent account of the events. The appellants took up a defence of complete denial and pleaded their false implication besides it was also urged that there was delay of about 18 hours in lodging the FIR and hence, the version contained therein was after due deliberations. The trial Court, after analysing the evidence and the defence taken up by the appellants, came to conclude that offence under Section 307 IPC would not be proved against the appellants as the grievous injury attributed to the appellants could not be termed as '**dangerous to life**'. The trial Court accordingly found appellant, Manoj Kumar guilty of an offence under Section 326 IPC and appellants Loti and Leelo respectively for the said offence with the aid of Section 34 IPC. Appellants Loti and Leelo were also found guilty of an offence under Section 323 IPC and appellant Manoj Kumar for the said offence with

the aid of Section 34 IPC.

I have heard learned counsel for the parties.

Mr.Navdeep Singh, counsel appearing for the appellants, submits that it would not be safe to maintain the conviction of the appellants as it is supported by the evidence of interested witnesses and no one has come forward to give any independent account of the events. He would also refer to the delay in lodging the FIR, which, as per the counsel, has not been sufficiently explained. In addition, the learned counsel would strenuously argue that even offence under Section 326 IPC would not be made out against the appellants as injury may have been caused on the abdomen, a vital part but the same had not cut or otherwise effected any vital organ to be termed as '***grievous in nature***' to attract the provisions of Section 326 IPC.

Mr.Berry, appearing for the State, however, would say that the evidence given by the complainant would receive an independent corroboration from the medical evidence and hence, it can not be said that the prosecution case is supported by only the interested witnesses. The learned counsel would further say that the Court has rightly excused the appellants from liability for an offence under Section 307 IPC but having regard to the nature of injuries, offence under Section 326 IPC is clearly made out.

I have considered the rival submissions made before me.

Complainant Jatinder Kumar has given clear and categoric evidence, including the reasons for which the appellants had caused these injuries to him. The motive for the appellants to cause these injuries has been given by the complainant. The medical evidence would clearly show that the complainant had received

following three injuries:-

- “1. A lacerated wound reddish in colour of size 3 cm x 2.5 cm deep on the left side of the fore-head. Advised x-ray.
2. A lacerated wound 2 cm x 0.5 cm on the Palmer surface of left little finger at its terminal phalanx. Slight ooze present on examination. Advised x-ray.
3. An incised stab wound of .175 cm. Long, 1 cm broad with peritoneal cut deep with prolapse of omentum through the wound on the left iliac region of abdomen, 12 cm away from the umbilicus (advised surgical opinion about the condition of the intestines).”

Both the doctors examined by the prosecution, namely, Dr.B.S.Bajwa (PW1) and Dr.Ajay Sahni (PW6) have opined the injury to be grievous in nature and dangerous to life. As per the opinion of the doctors, the complainant was saved due to proper and timely treatment. The finding returned by the court to the effect that an offence under Section 307 IPC was not made out, is not under challenge before this Court in any manner. It is, thus, clear that the preselection is satisfied with the finding returned by the Court that the offences under Sections 323, 326 IPC alone are made out from the facts and circumstances of the case. As already noticed, counsel for the appellants has mainly concentrated in saying that offence under Section 326 IPC would also not made out and at the most, it will be a case of an offence under Section 324 IPC. Having regard to the nature of evidence led by the prosecution, the existence of an incident can not be doubted. The complainant has given details about the manner in which he was attacked, which is well supported

by the evidence of PW5, who is his brother. They both may be related but there would not be any valid reason to doubt the version of two independent doctors, who would lend support to the oral account of incident given by the complainant and his brother. Immediately after the incident, the complainant had gone to the Dispensary at Dina Nagar. The complainant was attended to by PW1, who noticed 3 injuries, as noted above, on the body of the complainant. PW1 also opined that possibility of injury No.3 as a result of kirch could not be ruled out. The complainant had been attended by PW1 on the morning on 26.8.1993 as his wound was dressed by the compounder on the night, though he had remained at Dispensary for over two and a half hours. The complainant was then referred to Civil Hospital, Gurdaspur, followed by Guru Nanak Dev Hospital at Amritsar. Dr.Ajay Sahni (PW6) has deposed that complainant was admitted in 6 Surgical Ward on 26.8.1993 and that he was operated for an abdominal injury wherein it was found as under:-

“Peritoneum was cut with stab wound. Omentum and intestines were lying out. There was bleeding vessels in the omentum which was secured and ligated. Peritoneal lavage was done. Injury wound and abdominal wound closed in layers. Injury on the abdominal was declared grievous and could have been dangerous to life but with proper and timely treatment the patient was saved.”

PW6 also testified that on an application moved by local police on 1.12.1993, he opined to the effect that initially the injury on the person of complainant, Jatinder, was opined grievous and

dangerous to life. Thus, it can be safely said that the version given by the complainant and his brother has received a sufficient support from the medical evidence and as such, there would not be any doubt about the incident as such.

It is now to be seen if the injuries would attract an offence under Section 326 IPC or not?

In support of this part of his submission, counsel for the appellants has placed reliance on the case of **Sarju Prasad Vs. State of Bihar**, AIR 1965 Supreme Court 843. In this case, the Hon'ble Supreme Court has held that when an injury is caused in a vital region with a knife and the fact that no vital organ is cut would not by itself be sufficient to take the act out of the purview of Section 307 IPC. However, the Court went on to hold that in order to bring the offence home to the accused, the prosecution is required to establish that his intention was one of the three kinds mentioned in Section 300 IPC. It is further held that state of mind of the accused has to be deduced from the surrounding circumstances and the motive would be a relevant circumstance. Ultimately, the Court held that evidence was not sufficient to establish with certainty about the existence of a requisite intention or knowledge of the accused and hence, the accused could only be convicted for an offence under Section 324 IPC and not under Section 307 IPC. Further, as held in Sarju Prasad's case (supra), burden is on the prosecution to establish that the intention of the appellant in causing a particular injury was of any of three kinds referred to in Section 300 IPC and unless that burden is discharged by the prosecution, the offence under Section 307 IPC can not possibly be brought home against the

appellant. Having so held, the Court went on to hold as under:-

“8. The only other question then is whether the appellant intended to cause such injury as he knew to be likely to cause death or intended to inflict an injury which was sufficient in the ordinary course of nature to cause death or that he knew that his act was so imminently dangerous that it must in all probability cause death or cause an injury as is likely to cause death.”

Finding that though the injury was inflicted on the vital part of the body, but no vital organ of the body was injured and that injury was caused with knife, the Court found that it was unable to say anything with certainty that the appellants had such intention or knowledge. Having so found, the Court came to form an opinion that injury amounted only to an offence under Section 324 IPC. In my view, the facts of the case of Sarju Prasad's case (supra), would not be attracted in the present case. Even though, no vital organ of the complainant was effected to hold that the injury was such that life of the complainant was put to danger, yet it can not be denied that the injury caused was grievous in nature. To this effect, there is a clear evidence given by both the doctors examined by the prosecution. This is not a case where it can be said that injury caused was not grievous to attract the provisions of Section 326 IPC. The evidence also shows that the complainant had remained admitted in the hospital for 17 to 18 days. Doctors, though had opined that the injuries were dangerous to life but they never viewed these to be sufficient in the ordinary course of nature to cause death. This case, as such, would more appropriately fall under clause eighthly of

Section 320 IPC and, thus, punishable under Section 326 IPC. Accordingly, there is no merit in the submission made by counsel for the appellants that offence under Section 326 IPC would not be made out in the present case. Otherwise also, there is no merit in the appeal.

Counsel for the appellants then pleaded for leniency so far as the sentence awarded to the appellants is concerned. The appellants are sentenced to suffer 2 years RI. The incident is of 1993, which appears to have arisen out of a trivial issue between the persons staying in the same locality. The appellants have suffered a prolonged trial for over a period of 4 years and stand convicted since 18.10.1997. They are on bail since 26.11.1997. Thus, the appellants have faced this prosecution and trial for over a period of 14 years. Requiring them to undergo sentence at this stage may lead to reopening of old wounds and may disturb relations between the parties who are staying in the same locality.

Considering the totality of circumstances and taking into account the prolonged prosecution and trial that the appellants have faced, the sentence awarded to them is reduced to the period already undergone. The bail bonds and surety bonds, if any furnished in the trial Court, shall stand discharged. The appeal otherwise would stand dismissed.

April 25, 2007
khurmi

(RANJIT SINGH)
JUDGE